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- l'IEFA (European Fusion and acquisition Institute)

#### ■ **Chambers of Commerce and Industry**

- Chambers of Commerce and Industry Marseille-Provence, Moselle, Meurthe-et-Moselle

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#### ■ **Board of the CMAP**

- The Paris Chamber of Commerce and Industry
- Hauts de Seine Bar
- Paris Bar
- Paris Commercial Court
- The French Arbitration Association - AFA
- French National Committee of the International Chamber of Commerce
- French Institute of Chartered Accountants

#### ■ **Chairman**

- M. Pierre Simon, President of the Paris Chamber of Commerce and Industry

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##### **Members of the business communities**

- l'ACE (Attorneys Firm Council)
- l'AFDCC (Credit Managers)
- l'AFITE (French Association of environmental engineers and technicians)
- l'AFJE (French Association of Companies Attorneys)
- l'AMRA (Association for the Mediation within the relationships between associates)
- l'APRAM (Association of trademark and patents law practitioners)
- CEFAREA (French Association Center of Reinsurance and Insurance)
- Interdepartmental Paris Solicitor's Chamber
- le CIGREF et le SYNTEC Computing
- la CNECF (National Chamber of Financial Advice Experts)
- French Construction Federation—Ile de France region

### Insurance Companies

- Assistance Protection Juridique (Groupe GMF)
- Juridica (AXA Protection Juridique)
- MATMUT Protection Juridique
- Liberty Mutual

### Schools and Universities

- ESCP-EAP
- HEC
- Advancia Négocia

### ■ Counsel :

- M. Ivan Zakine, Honorary President of a Division of the Court of Cassation.

### ■ General Secretariat :

- Mme Sophie Henry

The CMAP operates through three Committees

### 1) The Nomination and Approval Committee

- Is in charged of:
  - Organise, as a whole, the proceedings proposed by the CMAP
  - Exert the administration authority of the proceedings in accordance to the rules
  - Designate the Mediators, the Arbitrators and all the third neutral parties
  - Deliver the previous approval to Mediators, Arbitrators and third parties, indispensable to all the designations of the proceedings.

**Chairman :** Mme Marie-Thérèse Feydeau, Counsel of the Court of Cassation

### 2) Information and Promotional Committee

The Information and Promotional Committee is responsible for promoting the CMAP and for encouraging heads of companies to avail themselves of the CMAP mediation and arbitration procedures.

**Chairman :** M. Jean-Luc Sauvage, Honorary President of the Hauts-de-Seine Commercial Court

### 3) Training Committee

The Paris Chamber of Commerce and Industry's well-known competence in the field of training has led it to organize, via the CMAP, conferences and training courses for business managers and their outside or in-house counsel in order to familiarize them with the technical and legal aspects of mediation and arbitration and to assist them in implementing these dispute-resolution mechanisms.

The Paris Chamber of Commerce and Industry also organizes training seminars for future mediators and arbitrators on the various aspects of their respective tasks.

The CMAP thereby contributes to promoting mediation and arbitration.

Lastly, a working group of experienced mediators and arbitrators has been set up to exchange views and reflect on the techniques and methods used in mediation and arbitration.

**Chairman :** M. Xavier Delcros, Director of the Paris Bar Institute of Continuing Education

■ **Arbitration is a contentious and private means of dispute resolution.** It enables the establishment of judicial proceedings, identical to those conducted before national courts, in a confidential setting. The arbitrators, who are selected for their competence and their availability, ensure rapid access to justice by means of a flexible process.

The award rendered by a sole arbitrator or an arbitral panel is equivalent to a judgment that is binding on the parties.

These two procedures can be complementary and used in succession (e.g. mediation followed by arbitration if the parties did not reach an amicable settlement; or arbitration, which once started may be suspended to try mediation) or at the same time (simultaneous Med-Arb).

**CMAP has also designed other procedures, called « New Solutions », that are exposed in specific guide.** These innovative procedures seek to offer enterprises with tools to prevent litigation from occurring, through the early intervention of skilled and neutral third parties, who are mandated to provide an independent legal evaluation, an amicable technical expert opinion, or to provide rapid decisions. Finally, an online recommendation service allows access to a neutral third party via a secure computer network system.

The purpose of these two guides, which revisit and explain the entire range of rules provided by CMAP, is to allow companies at any moment, whether from the moment that the symptoms of a conflict first appear or after several years of litigation, to engage in an efficient and customized dispute resolution process, with managed deadlines and costs, using CMAP's know-how in this field.

Conflict management is an important strategic matter for enterprises, which they cannot afford to leave to chance.

Until recently, enterprises dealt with their commercial disputes almost exclusively in the national courts, with the risks and restrictions that this entailed, and which often led to unsatisfactory outcomes for business managers.

Any dispute, no matter its nature, weakens an entity and its business relationships. It affects its profitability and performance and, if an outcome is not rapidly reached, it can even affect its future development prospects or continued existence.

Today, a company can decide to resort to an economical and rapid means of resolving disputes, outside of the courthouse, by resorting to « Alternative Dispute Resolution (ADR) » as it is called in common law countries, or « Modes Alternatifs de Règlement des Conflits (MARC) » as it is called in France.

**Mediation and arbitration are the two main procedures that offered by CMAP to settle disputes. This guide is primarily dedicated to these two forms of dispute resolution.**

■ **Mediation is an amicable dispute resolution process.** It provides a shield of confidentiality and trust, which allows entities to negotiate and explore by themselves a mutually acceptable solution to their dispute. The mediator orchestrates these exchanges, without becoming involved in the substance of the dispute, leaving the parties entirely free to decide the outcome to their dispute.

Mediation as put in place by CMAP is an amicable process for the resolution of disputes. Its object is to assist the parties in reaching the optimal negotiated solution or, at least, a solution which is acceptable by all of the parties. In this context, it is necessary to highlight that the mediator is neither judge nor arbitrator but rather a catalyst whose objective is to facilitate negotiation between the parties in order to help them find a solution to their dispute. In principle, he or she gives an opinion only when unanimously requested to do so.

The agreement reached by the parties at the end of mediation may be the subject of a written settlement agreement if the parties so wish. This has the advantage of rendering the agreement *res judicata*, i.e. conferring upon it, between the parties, similar status and effect to a final court judgement.

Lastly, unless otherwise agreed by the parties beforehand, the failure of the mediation does not automatically result in arbitration. Mediation is not intrinsically linked to arbitration.

The characteristics of CMAP mediation are as follows:

- **The response to a need**

Promoting a mediation process for resolving business disputes responds to a need which is increasingly felt. Parties to a business relationship wish to find, even before a conflict develops, a neutral venue in which to examine and discuss their respective interests, in the presence of a third party. Appropriate solutions, which in many cases could not otherwise have been adopted, allow the parties to continue their business relationship.

- **A very open access**

The Chamber of Commerce and Industry of Paris is committed to promote recourse to mediation. For this reason, mediation can be initiated not only upon the joint request of the parties, but also in response to a desire expressed by one of the parties, in which case CMAP

### ■ INTRODUCTORY REMARKS

The purpose of this guide is to familiarise company managers and their advisors, lawyers and chartered accountants, as well as legal managers with mediation so that they may appreciate its advantages, understand how it differs from arbitration, and thus more readily have recourse to mediation as a means of resolving their disputes.

CMAP Rules of Mediation contribute to:

- helping companies to learn about and understand mediation;
- creating a climate favourable to mediation by using qualified mediators selected by the Centre, who mutually benefit from each other's experience;
- providing companies with a simple and often inexpensive method of reconciling their differences in an environment conducive to dialogue and guaranteed by professionalism.

As a preliminary observation, it should be recalled that the fundamental difference between mediation and arbitration is that the purpose of mediation is to bring about reconciliation between parties through the intervention of a third party and not to settle the dispute by imposing a binding decision.

proposes to the other party that the process be set in motion. But, by its very nature, mediation cannot, of course, be imposed to the parties.

- **A flexible, rapid and confidential process**

The mediator's task is to assist the parties to seek, with loyalty and due regard for their respective interests, a conciliatory solution to the dispute between them. The mediator may perform his task as he sees fit. Since no particular restrictions are placed on the mediator or the parties with regard to the conduct of the mediation proceedings, the mediator and the parties do not find themselves in a context constrained by formalities. However, the mediator must complete his or her task within a two-month time limit, unless an extension is requested by both parties.

Lastly, the confidential nature of the mediation process is clearly highlighted in the Rules: no statement or proposal made before or by

- **Impartial and qualified mediators**

CMAP Rules of Mediation aim both to respect the parties' freedom, without which the mediation cannot attain its desired object, and to give full latitude to the mediator to assist the parties throughout the process. However, it is necessary to recall that the legitimacy of the mediator relies wholly on the confidence placed in him or her by the parties. This is the reason why CMAP calls for mediators, who are trained in the technicalities of mediation and whose professional competence and negotiation skills are recognised.

- **Mediation costs**

To permit all companies an easy access to this amicable means of dispute resolution, the Paris Chamber of Commerce wants that CMAP guarantees to the companies a manageable cost of its mediation services as part of the Chamber of Commerce's mission of public service.

A distinction is thus made between **disputes involving a sum of more or less than 30.000 euros**. For disputes involving a sum in dispute of less than €30.000, the cost of opening the file as well as the fees of the mediator are fixed, while an hourly rate applies to mediations with an

amount in dispute of more than €30.000. This distinction ensures that disputes of lesser financial significance but of otherwise significant importance for companies are dealt with efficiently and inexpensively.

Further, a distinction is made between mediations initiated after the dispute has developed and mediations initiated under a clause set forth in the contract between the parties.

Thus, **in the absence of a mediation clause, the fee for opening the file is met by the party who retains CMAP**. The fees of the mediator are then shared between the parties as agreed between them, the matter of the allocation of costs being one of the issues to be discussed by the mediator and the parties during the course of the mediation. However, **failing agreement between the parties with respect to the costs, the costs remain the responsibility of the party who originally retained CMAP for the mediation**.

In the case of a joint retainer of CMAP, the costs of the mediation are, in principle, shared equally by the parties.

# RULES

## Mediation Rules

### ■ ARTICLE 1: INITIATION OF MEDIATION PROCEEDINGS

Mediation proceedings are initiated upon the request of the parties, where they have so agreed at the outset of the dispute, or upon the request of one party, where the parties have so agreed under the terms of their contract.

Mediation proceedings may also be initiated:

- at the request of one party who wishes the Centre to propose mediation proceedings and where the other party is not opposed to it,
- or, alternatively, where the Centre receives a request for arbitration and considers that mediation may be proposed to the parties, subject to their acceptance of it.

Any mediation which is entrusted to CMAP entails acceptance by the parties of the present Rules.

### ■ ARTICLE 2: REQUEST FOR MEDIATION

The Centre is seized with a matter at the request of the parties or one of them, upon receipt of a request for mediation that contains:

- the legal particulars or company details and the addresses of the parties;
- a brief description of the nature and circumstances of the dispute;
- and their respective positions or the position of the party requesting mediation.

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The request for mediation is not registered unless it is accompanied by payment of the administrative fees for opening the matter calculated in accordance with the scale of fees in effect, as provided by Article 8 hereof. Under no circumstances this sum refundable.

Where mediation proceedings are suggested by the Centre of its own initiative (under Article 1 CMAP's Mediation Rules and Article 19 of CMAP's Arbitration Rules), the request for arbitration shall serve as request for mediation. It entails payment of the initial fees in accordance with the preceding paragraph, which will be set off against the sum paid at the time of the registration of the arbitration request.

### ■ ARTICLE 3: INFORMING THE OTHER PARTY

#### 1. Where a mediation clause already exists:

When the Centre is seized by a party who invokes an existing conciliation or mediation clause in the contract subject of the dispute, it shall inform the other party of the initiation of mediation proceedings. The Centre shall send these Rules to the other party and allow it fifteen (15) days from receipt of CMAP's letter to provide its comments.

#### 2. In the absence of a mediation clause:

As soon as the request is registered, the Centre shall inform the other party and invite it to participate in mediation proceedings. It shall send these Rules to the other party and allow it fifteen (15) days from receipt of CMAP's letter to reply to the Centre.

### ■ ARTICLE 4: RESPONSE TO THE REQUEST

#### 1. Where a mediation clause already exists:

As soon as the comments of the other party have been received, or once the time limit defined in Article 3.1 above has expired, the General Secretariat of the Centre shall submit the case to CMAP's Accreditation and Appointments Committee so that a mediator may be designated.

## 2. In the absence of a mediation clause:

If the other party so agrees, the General Secretariat submits the case to CMAP's Accreditation and Appointments Committee so that a mediator may be designated. If the other party explicitly refuses to participate in mediation proceedings or fails to respond once the time limit defined in Article 3.2 above has expired, the Centre shall so advise the party who submitted the request for mediation and close the file, without refunding the administrative fees paid for opening the matter.

### ■ ARTICLE 5: APPOINTMENT OF THE MEDIATOR

As soon as the parties have agreed to participate in mediation proceedings or when the contract between them contains a clause referring to these Rules, the Accreditation and Appointments Committee shall appoint a mediator, who shall be selected according to the nature of the dispute or, as the case may be, based on a suggestion from the parties.

CMAP may propose to the parties that a trainee mediator attend the mediation sessions. The trainee mediator will then be bound by the same obligation of confidentiality as the appointed mediator.

### ■ ARTICLE 6: INDEPENDENCE, NEUTRALITY AND IMPARTIALITY OF THE MEDIATOR

The mediator must be impartial, neutral and independent of the parties. In appropriate cases, (s)he must disclose to the parties and to CMAP's General Secretariat any circumstances which might affect her/his independence and/or impartiality in the eyes of the parties. In such case, (s)he may be confirmed or maintained as mediator only after a decision by the Accreditation and Appointments Committee and with the written consent of all the parties.

The mediator appointed by the Committee shall sign a statement of independence.

Should (s)he come to the view, during the course of the mediation process, that there exists any factor liable to call into question her/his independence, (s)he shall so inform the parties. The mediator shall continue her/his task if the parties so agree in writing.

Otherwise (s)he shall stay the mediation proceedings. The Accreditation and Appointments Committee shall then proceed to appoint a replacement mediator.

### ■ ARTICLE 7: THE MEDIATOR'S ROLE AND THE CONDUCT OF MEDIATION PROCEEDINGS

◦ The mediator helps the parties to find a negotiated outcome to their dispute. (S)he has full discretion as to the methods by which (s)he performs her/his task, subject to obligations of loyalty and respect of the interests of each of the parties. If (s)he considers it useful, (s)he may hear the parties separately, if they have agreed to this. In this case, (s)he tries to ensure equal balance of treatment between all the parties and the respect of the confidentiality of the procedure (cf. paragraph below).

◦ In the case of contractual mediation, at the beginning of mediation proceedings, the mediator has the parties sign an agreement apportioning the expenses and fees of the mediation between them.

◦ Where a mediation clause exists, if one of the parties refuses to attend a meeting organised by the mediator, an end of mission report is submitted to the Centre by the mediator. Similarly, the mediator also submits a report in the event that the mediation ends without the parties having reached an agreement. CMAP's General Secretariat then closes the file and so informs the parties.

The mediator and the parties are held to the strictest obligation of confidentiality for everything that relates to the mediation: no finding, statement, or proposal made by or before the mediator may be used subsequently, even in court proceedings, except in cases where all parties have formally agreed to this.

◦ The duration of the mediation shall not exceed two months starting from the appointment of the mediator by the Centre. This period may be extended by CMAP or by the judge that ordered the mediation, with the agreement of the mediator and all the parties, the Centre being entitled to terminate the mediation proceedings on the expiry of a period of six months from the date of appointment of the mediator, without refunding the administrative fees.

- If it appears to the mediator that the mediation process will not result in an agreement, (s)he may terminate her/his mission. Equally, and at any time, either party is free to bring the mediation proceedings to end.
- Should the mediator consider that (s)he is unable to pursue her/his mission, (s)he shall stay the mediation proceedings. (S)he shall promptly give notice thereof to CMAP's General Secretariat. The CMAP's Accreditation and Appointments Committee shall then proceed to appoint a replacement mediator as soon as possible, if the parties so request.
- In the hypothesis provided for at Article 1, the parties may at any time request that the mediation proceedings be terminated and, where appropriate, that arbitration proceedings be started.
- The mediator may not be appointed as an arbitrator or participate in any capacity whatsoever in any ongoing proceedings, except upon the written request of all the parties.
- The agreement reached as a result of mediation proceedings shall be written up in a document that is signed by the parties.
- In the case of an international dispute, the parties may ask the mediator if (s)he is willing to be appointed by the Centre as an arbitrator in order to deliver an **award by consent**. If the mediator so agrees, CMAP starts arbitration proceedings. In addition to the fees and expenses due for the mediation, shall be added half of the fees and expenses, in accordance with the minimum fee for the range of the sum in dispute, that would be incurred shall an arbitration be commenced, as defined in the scale appended to the Arbitration Rules in effect at the time proceedings were originally initiated with the Centre.
- Once any sums due for this arbitration procedure have been paid, the Accreditation and Appointments Committee is requested to validate the appointment of the arbitrator. The award is delivered in accordance with CMAP's Arbitration Rules.

#### ■ ARTICLE 8: MEDIATION FEES AND EXPENSES

The fees and expenses of the mediation shall be set, as appropriate, in accordance with the fixed or sliding scale annexed to these Rules that are in effect at the date CMAP receives the request for mediation.

During the course of mediation proceedings that are not covered by the fixed scale, the Centre may request an additional upfront advance against final fees and expenses.

In the case of a clause designating CMAP, and unless the parties agree otherwise, the fees and expenses shall be borne equally by the parties. In the absence of a contractual clause designating CMAP and of an agreement on the sharing of mediation costs, the fees and expenses shall be borne by the applicant.

If an arbitration follows, no filing fee for opening the matter, other than the fee already paid in respect of the mediation, is due by the parties.

#### ■ ARTICLE 9: INTERPRETATION OF RULES - APPLICABLE RULES

CMAP shall have sole jurisdiction to interpret these Rules.

A request for mediation shall be processed in accordance with the Rules and scale of fees and expenses in effect on the date of receipt of the request.



# Principles

## Guiding Principles For Mediators

- **Role of the Mediator**

Article 7 of the Rules of Mediation provides that: “ The mediator helps the parties to find a negotiated outcome to their dispute. (S)he has full discretion as to the methods by which (s)he performs her/his task, subject to obligations of loyalty and respect of the interests of each of the parties. If (s)he considers it useful, (s)he may hear the parties separately, if they have agreed to this. ”

The mediator has no authority other than that arising out of the confidence placed in him or her by the parties.

The mediator is neither a judge nor an arbitrator. His/her role is to seek with the parties a negotiated solution by bringing together their points of view.

The mediator undertakes to respect CMAP Rules of Mediation, in particular with respect to time limits.

- **The Mediator and the Parties**

As soon as possible after accepting her/his appointment, the mediator contacts the parties to organise his/her mission.

(S)he obtains the agreement of the parties, if (s)he considers it appropriate, to meet separately with them. In such a case, the mediator undertakes to respect the principle of equality between the parties.

The mediator analyses with each party its position with respect to the dispute and makes sure that each party fully understands the position of the other party or parties.

To accomplish this, (s)he may suggest ideas to resolve the issues, but in no circumstances (s)he may attempt to impose any terms or settlement, particularly on a party which is clearly in a weak position. In his or her approach, the mediator must not only be guided by principles of fairness but also take into account the parties’ expectations with regard to the agreements entered into by them. If her or his mission is successful, the mediator invites the parties to formalise their agreement by signing a written settlement agreement. Since the mediator is not a party to that document, (s)he does not sign it.

However, upon the request of the parties, (s)he may affix her/his signature to the settlement agreement to attest to the agreement reached. In such case, her or his signature is preceded by the words “in the presence of X, mediator designated by CMAP.”

- **Secrecy and Confidentiality**

The mediator is bound by a duty of secrecy regarding the dispute entrusted to her or him, both with regard to its existence and to all other aspects of the mediation.

The mediator’s duty of secrecy is general, absolute, and unlimited in time. The mediator may be released from it only under the conditions prescribed by law.

The mediator is prohibited from having any professional relationship with any of the parties during the year following the end of her or his mission.

The mediator’s mission ends when a settlement agreement is signed or when the failure of the mediation is recorded. From that date onward, the mediator cannot intervene in any capacity whatsoever in connection with the dispute or its resolution, except upon the request of all the parties and after giving notice thereof to the General Secretariat of CMAP.